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NAKAMURA, BRIAN OSBERG, DAVID RHAMY and SHARON UPDIKE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

NATIONAL CREDIT UNION  
ADMINISTRATION BOARD AS  
CONSERVATOR FOR WESTERN  
CORPORATE FEDERAL CREDIT  
UNION,

Plaintiff,

vs.

ROBERT A. SIRAVO, et al.,

Defendants.

No. CV 10-01597 GW (MANx)

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF DEFENDANTS'  
MOTIONS TO DISMISS  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT (DOC. 116)**

Honorable George H. Wu  
Courtroom 10  
312 North Spring Street

Date: June 9, 2011  
Time: 8:30 a.m.  
Courtroom: Los Angeles, 10

1 Defendants WILLIAM CHENEY, GORDON DAMES, ROBERT H.  
2 HARVEY, JR., JAMES JORDAN, TIMOTHY M. KRAMER, ROBIN LENTZ,  
3 JOHN M. MERLO, WARREN NAKAMURA, BRIAN OSBERG, DAVID  
4 RHAMY and SHARON UPDIKE (the “Directors”) and ROBERT JOHN  
5 BURRELL (“Burrell”) hereby request this Court to take judicial notice of the  
6 following documents attached hereto and referenced as Exhibits 1 through 10.  
7 This request is made pursuant to Rule 201 of the Federal Rules of Evidence and  
8 the authorities cited below. This request is made in connection with the motions  
9 filed herewith by the Directors and by Burrell and the other officer defendants to  
10 dismiss Plaintiff’s Second Amended Complaint filed February 22, 2011, Doc.  
11 116 (the “SAC”).

12 **BASIS FOR REQUESTING JUDICIAL NOTICE**

13 **A. Exhibits 1 through 9 – documents the SAC relies upon**

14 Under the incorporation by reference doctrine, the Court is expressly  
15 authorized to consider documents on a motion to dismiss “whose contents are  
16 alleged in a complaint and whose authenticity no party questions, but which are  
17 not physically attached to the pleading . . . .” *Branch v. Tunnel*, 14 F.3d 449, 454  
18 (9th Cir. 1994), overruled on other grounds by *Galbraith v. County of Santa*  
19 *Clara*, 307 F.3d 1119 (9th Cir. 2002). The Court may take judicial notice of  
20 documents whose contents are alleged in a complaint, quoted in a complaint,  
21 relied on by a complaint or integral to a complaint, or on which the complaint  
22 necessarily relies. *Swartz v. KPMG LLP*, 476 F. 3d 756, 763 (9th Cir. 2007). As  
23 *Swartz* states: “[I]n order to ‘[p]revent[] plaintiffs from surviving a Rule  
24 12(b)(6) motion by deliberately omitting . . . documents upon which their claims  
25 are based,’ a court may consider a writing referenced in a complaint but not  
26 explicitly incorporated therein if the complaint relies on the document and its  
27 authenticity is unquestioned.” *Id.* (quoting *Parrino v. FHP, Inc.*, 146 F. 3d 699,  
28 706 (9th Cir. 1998)). *See also Dreiling v. American Exp. Co.*, 458 F. 3d 942, 946

1 n.2 (9th Cir. 2006) (holding that courts, on a motion to dismiss, “may consider  
2 documents referred to in the complaint or any matter subject to judicial notice,  
3 such as SEC filings.”); *Natural Resources Defense Council, Inc. v. SCAQMD*,  
4 694 F. Supp. 2d 1092, 1103 (C.D. Cal. 2010) (Wu, J.) (“In its consideration of  
5 the motion [to dismiss], the court is limited to the allegations on the face of the  
6 complaint (including documents attached thereto), matters which are properly  
7 subject to judicial notice, and ‘documents whose contents are alleged in a  
8 complaint and whose authenticity no party questions, but which are not  
9 physically attached to the pleading,’” citing *Lee v. City of Los Angeles*, 250 F.3d  
10 668, 688-89 (9th Cir.2001)); *Branch*, 14 F.3d at 453-54.

11 Consideration of these documents “does not convert the motion to dismiss  
12 into a motion for summary judgment.” *Branch*, 14 F.3d at 454 (quoting *Romani*  
13 *v. Shearson Lehman Hutton*, 929 F.2d 875, 879 n.3 (1st Cir. 1991)). The Court  
14 may properly consider the full text of documents mentioned in a complaint and is  
15 not bound by the plaintiff’s interpretation of them. *See In re Stac Elec. Sec.*  
16 *Litig.*, 89 F.3d 1399, 1405-09 (9th Cir. 1996).

17 Here, the SAC specifically refers to and quotes from a number of ALCO  
18 books and other presentations made to defendants. Thus, these ALCO books and  
19 presentations (Exhibits 1 through 9) are properly the subject of judicial notice.

20 The undersigned sought clean copies of these documents from the NCUA,  
21 but its counsel declined to provide them. Accordingly, we attach copies obtained  
22 during the process of evidence collection and preservation. The ALCO books  
23 contain a few handwritten notes made by an individual who is not a party to this  
24 litigation. The handwritten notes are not part of the official documents, and  
25 defendants do not ask the court to take judicial notice of the handwritten notes.

26 **B. Exhibit 10 – documents that are a matter of public record**

27 This Court may take judicial notice of information and documents that are  
28 not subject to reasonable dispute and that are matters of public record. Fed. R.

Evid. 201(b); *Lee*, 250 F.3d at 688-89; *Mack v. South Bay Beer Distributors, Inc.*, 798 F. 2d 1279, 1282 (9th Cir. 1986); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (“On a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings.”).

Exhibit 10 is the transcript of a video presentation created by the National Credit Union Administration. Both the transcript and the video are publicly available on the NCUA’s website. For the transcript, see NCUA, Transcript of Corporate System Resolution Presentation, Track 2, [http://event.on24.com/event/22/07/64/rt/1/documents/player\\_docanchr\\_1/transcriptforchapter2.pdf](http://event.on24.com/event/22/07/64/rt/1/documents/player_docanchr_1/transcriptforchapter2.pdf) (last visited April 18, 2011). For the video, see <http://www.ncua.gov/Resources/CorporateCU/CSR/Presentations.aspx> (last visited April 18, 2011). Given the fact that the transcript is publicly available on a website and capable of accurate and ready determination, the transcript is properly the subject of judicial notice.

Exhibit	Description and Where Cited in SAC
1	April 2006 ALCO book (SAC ¶ 97)
2	June 2006 Officials Orientation (SAC ¶ 99)
3	June 2006 WesCorp Board Training (SAC ¶ 99)
4	September 2006 ALCO book (SAC ¶ 138)
5	October 2006 ALCO book (SAC ¶ 139)
6	December 2006 ALCO book (SAC ¶ 139)
7	January 2007 ALCO book (SAC ¶ 141)
8	February 2007 ALCO book (SAC ¶ 142)
9	March 2007 ALCO book (SAC ¶ 142)
10	NCUA, Transcript of Corporate System Resolution Presentation, Track 2

1 Dated: April 18, 2011.

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12 By /s/ Bruce A. Ericson  
13 Bruce A. Ericson

14 Attorneys for Defendants Robert John Burrell, William  
15 Cheney, Gordon Dames, Robert H. Harvey, Jr., James  
16 Jordan, Timothy M. Kramer, Robin Lentz, John M. Merlo,  
17 Warren Nakamura, Brian Osberg, David Rhamy and  
18 Sharon Updike  
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## SUPPORTING DECLARATION OF BRUCE A. ERICSON

**I, BRUCE A. ERICSON, declare:**

1. I am a member of the State Bar of California and the Bar of this Court, a partner of the law firm of Pillsbury Winthrop Shaw Pittman LLP and one of the attorneys of record for the Directors and Burrell in this action. I have first hand and personal knowledge of the matter set forth herein, and if called as a witness, I could and would competently testify under oath thereto.

2. Attached hereto as Exhibits 1 through 9 are documents that my colleagues and I collected while complying with our evidence-preservation obligations under law. As noted on page 2 above, we asked the NCUA (through its counsel) for clean copies of these documents, but it declined to provide them to us, so we are using instead the copies that we obtained while securing and preserving evidence.

3. Attached hereto as Exhibit 10 is a true and correct copy of the transcript described in the table on page 3 above, which was obtained from the website ([www.ncua.gov](http://www.ncua.gov)) mentioned on page 3 above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 18, 2011, at San Francisco, California.

*/s/ Bruce A. Ericson*  
Bruce A. Ericson